

Senate Bill No. 1160

Passed the Senate August 29, 2012

Secretary of the Senate

Passed the Assembly August 28, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

Second enrollment

CHAPTER _____

An act to amend Section 7904 of, and to repeal and add Section 7907 of, the Public Utilities Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1160, Padilla. Communications: service interruptions.

Existing law provides that an agent, operator, or employee of a telegraph or telephone office who willfully refuses or neglects to send a message received by the office is guilty of a misdemeanor. Existing law provides that these requirements are not applicable when charges for transmittal or delivery of the message have not been paid or tendered, for messages counseling, aiding, abetting, or encouraging treason or resistance to lawful authority, to a message calculated to further any fraudulent plan or purpose, to a message instigating or encouraging the perpetration of any unlawful act, or to a message facilitating the escape of any criminal or person accused of crime.

This bill would retain the provision that the above-described requirements are not applicable when payment for charges for transmittal or delivery of the message has not been paid or tendered, but would delete the other enumerated exceptions.

Existing law provides that where a law enforcement official has probable cause to believe that a person is holding hostages and is committing a crime, or is barricaded and is resisting apprehension through the use or threatened use of force, the official may order a previously designated telephone corporation security employee to arrange to cut, reroute, or divert telephone lines, as specified.

This bill would recast this provision.

With certain exceptions, this bill would prohibit a governmental entity, as defined, and a provider of communications service, as defined, acting at the request of a governmental entity, from undertaking to interrupt communications service, as defined, for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer, as defined, that makes specified findings. The bill would require the order to clearly describe the specific service to be interrupted with sufficient detail

as to customer, cell sector, central office, or geographical area affected, be narrowly tailored to the specific circumstances under which the order is made, and would require that the order not interfere with more communication than is necessary to achieve the purposes of the order. The bill would allow the order to authorize an interruption of service only for as long as is reasonably necessary, require that the interruption cease once the danger that justified the interruption is abated, and require the order to specify a process to immediately serve notice on the communication service provider to cease the interruption. The bill would provide that a good faith reliance upon an order of a judicial officer, a signed statement of intent to apply for a court order, as prescribed, or a request to cut, reroute, or divert lines made by a designated police officer who is authorized to use an electronic amplifying or recording device in an emergency situation that involves the taking of a hostage or the barricading of a location pursuant to a specified provision of the Penal Code, constitutes a complete defense for any communications services provider against any action brought as a result of the cutting, rerouting, or diversion of lines as requested by that officer.

The bill would also find and declare that ensuring that California users of any communications service not have this service interrupted and thereby be deprived of a means to connect with the state's 911 emergency services or be deprived of a means to engage in constitutionally protected expression, is a matter of statewide concern, and not a municipal affair, as provided.

The people of the State of California do enact as follows:

SECTION 1. Section 7904 of the Public Utilities Code is amended to read:

7904. Every agent, operator, or employee of any telegraph or telephone office, who willfully refuses or neglects to send any message received at the office for transmission, or willfully postpones the transmission of the message out of its order, or willfully refuses or neglects to deliver any message received by telegraph or telephone, is guilty of a misdemeanor. Nothing in this section shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered.

SEC. 2. Section 7907 of the Public Utilities Code is repealed.

SEC. 3. Section 7907 is added to the Public Utilities Code, to read:

7907. (a) For purposes of this section, the following terms have the following meanings:

(1) “Communications service” means any communications service that interconnects with the public switched telephone network and is required by the Federal Communications Commission to provide customers with 911 access to emergency services.

(2) “Governmental entity” means every local government, including a city, county, city and county, a transit, joint powers, special, or other district, the state, and every agency, department, commission, board, bureau, or other political subdivision of the state, or any authorized agent thereof.

(3) “Interrupt communications service” means to knowingly or intentionally suspend, disconnect, interrupt, or disrupt communications service to one or more particular customers or all customers in a geographical area. “Interrupt communications service” does not include any interruption of service pursuant to a customer service agreement, a contract, a tariff, a provider’s internal practices to protect the security of its networks, Section 2876, 5322, or 5371.6 of this code, Section 149 or 7099.10 of the Business and Professions Code, or subdivision (d) of Section 4576 of the Penal Code.

(4) “Judicial officer” means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(b) (1) Unless authorized pursuant to subdivision (d) or (f), no governmental entity and no provider of communications service, acting at the request of a governmental entity, shall interrupt communications service for the purpose of protecting public safety or preventing the use of communications service for an illegal purpose, except pursuant to an order signed by a judicial officer that includes all of the following findings:

(A) That probable cause exists that the service is being or will be used for an unlawful purpose or to assist in a violation of the law.

(B) That absent immediate and summary action to interrupt communications service, serious, direct, immediate, and irreparable danger to public safety will result.

(C) That the interruption of communications service is narrowly tailored to prevent unlawful infringement of speech that is protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution, or violate any other rights under federal or state law.

(2) The order shall clearly describe the specific communications service to be interrupted with sufficient detail as to customer, cell sector, central office, or geographical area affected, shall be narrowly tailored to the specific circumstances under which the order is made, and shall not interfere with more communication than is necessary to achieve the purposes of the order.

(3) The order shall authorize an interruption of service only for as long as is reasonably necessary and shall require that the interruption cease once the danger that justified the interruption is abated and shall specify a process to immediately serve notice on the communications service provider to cease the interruption.

(c) An order to interrupt communications service, or a signed statement of intent provided pursuant to subdivision (d), that falls within the federal Emergency Wireless Protocol shall be served on the California Emergency Management Agency. All other orders to interrupt communications service or statements of intent shall be served on the communications service provider's contact for receiving requests from law enforcement, including receipt of and responding to state or federal warrants, orders, or subpoenas.

(d) (1) Communications service shall not be interrupted without a court order pursuant to subdivision (b) except in the most extreme emergency circumstances that require immediate interruption of communications service and there is insufficient time to obtain a court order. This standard is based on the following findings:

(A) Interruption of communications service threatens public safety by depriving persons of the ability to call 911 and communicate with family, friends, employers, schools, and others in an emergency; deprives persons of the ability to receive emergency alerts; and impairs the ability of first responders to communicate with each other.

(B) Interruption of communications service constitutes a prior restraint on speech, which the United States Supreme Court has

held bears a heavy presumption of unconstitutionality and is justified under the First Amendment to the United States Constitution only in exceptional circumstances involving, for example, national security, nuclear disaster, or detonation of a bomb.

(2) If a governmental entity reasonably determines, upon consideration of these findings, that emergency circumstances are so extreme and exceptional that an interruption would meet the requirements for an order under subdivision (b) and outweigh any public safety threat from the interruption then the governmental entity may interrupt communications service without first obtaining a court order as required by this section, provided the entity does all of the following:

(A) Apply for a court order without delay, and in no event, later than six hours after commencement of an interruption of communications service.

(B) Provide the provider of communications service involved in the service interruption a statement of intent to apply for a court order signed by an authorized official of the governmental entity. The statement of intent shall clearly describe the extreme emergency circumstances, and the specific communications service to be interrupted with sufficient detail as to the customer, cell sector, central office, or geographical area affected.

(C) Provide conspicuous notice of the application for a court order authorizing the communications service interruption on its Internet Web site without delay, unless the circumstances that justify an interruption of communications services without first obtaining a court order justify not providing the notice.

(e) A provider of communications service that intentionally interrupts communications service pursuant to subdivision (b) shall comply with any rule or notification requirement of the commission or Federal Communications Commission, or both, and any other applicable provision or requirement of state or federal law.

(f) A designated peace officer who is authorized to use an electronic amplifying or recording device in an emergency situation that involves the taking of a hostage or the barricading of a location pursuant to Section 633.8 of the Penal Code may order a communications service provider to cut, reroute, or divert lines for the purpose of preventing communication by suspects involved in that emergency situation. If a designated police officer exercises

authority pursuant to this subdivision, the procedural requirements for obtaining after-the-fact authority from a court pursuant to Section 633.8 of the Penal Code shall apply.

(g) (1) Good faith reliance by a communications service provider upon an order of a judicial officer authorizing the interruption of communications services pursuant to subdivision (b), or upon a signed statement of intent to apply for a court order that the government asserts meets the requirements of subdivision (d), shall constitute a complete defense for any communications service provider against any action brought as a result of the interruption of communications service as directed by that order or statement.

(2) Notwithstanding Section 591, 631, or 632 of the Penal Code, good faith reliance by a communications service provider, upon a request by a designated peace officer, pursuant to subdivision (f), to cut, reroute, or divert lines for the purpose of preventing communication by suspects involved in an emergency situation that involves the taking of a hostage or the barricading of a location, shall constitute a complete defense for any communications service provider against any action brought as a result of the cutting, rerouting, or diversion of lines as requested by that officer.

(h) The Legislature finds and declares that ensuring that California users of any communications service not have that service interrupted, and thereby be deprived of 911 access to emergency services or a means to engage in constitutionally protected expression, is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution.

Approved _____, 2012

Governor